IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-08-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Criminal Revision No.1556 of 2003

I.S.Vasu(P.W.8) ..Petitioner

-vs-

1. Dr.Krishnan(A1)
2. Dr.Subba Rao(A2)
3. The Inspector of Police
   Anna Nagar Circle
   R-5, Choolaimedu Police Station,
   Chennai .. Respondent

This revision is filed against the Judgment made in S.C.No.520 of 2000 on the file of the IV Additional Sessions Judge, City Civil Court,Chennai dated 18.6.2003.

For Petitioner : Mr..Raja Senthoor Pandian

For respondents : Mr. A.Padmanabhan-RR1 & 2
Mr.V.R.Balasubramaniam-R3
Additional Public Prosecutor

O R D E R

This revision has been preferred by P.W.8 in S.C.No.520 of 2000 on the file of IV Additional Sessions Judge, City Civil Court, Chennai. Both A1 and A2 have been charged under Section 302 r/w 201 of IPC.

2. The case was taken on file by XVII Metropolitan Magistrate, Chennai and after furnishing the copies to the accused under Section 207 of Cr.P.C. On his appearance on summons, committed the case to the Court of Sessions under Section 209 of Cr.P.C. since the case is exclusively triable by a Court of Sessions. The learned Sessions Judge, has framed charges under Section 302 r/w 201 of IPC against A1 and A2 and when questioned, the accused pleaded not guilty.

3. On the side of the Prosecution , P.Ws 1 to 20 were examined. Exs P1 to P26 were exhibited. M.O.1 to M.O.10 were marked.

4.P.W.1 Sivakumar is the complainant, who has preferred ExP1

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complaint with the police, after seeing a body floating on the well in his backyard on 22.10.1998. P.W.2 is the brother of P.W.1, who also corroborates the evidence of P.W.1 to the effect that a body was floating in the well on the backyard of his house and on information police came to the place of occurrence and retrieved the body from the well.

4a. P.W.3 Selvaraj, who took the body from the well and removed the same in his three wheeler cycle to mortuary. P.W4 and P.W.5 the Mahazar witnesses have not supported the case of the prosecution except P.W.4 admitting his signature in Ex P2 mahazar as ExP3 and P.W.5 admitting his signature as Ex P5 in ExP4 mahazar.

4b. P.W.6 is a well-wisher of the family of the deceased as well as the accused who had arranged the marriage between them. P.W.7 recovery mahazar witness who has also not supported the case of the prosecution except admitting his signature as Ex P7 in ExP6.

4c. P.W.8 is the father of the deceased, who had identified the corpse which was floating in the well of P.W.1's house on 23.10.1998. He has also identified the corpse on 25.10.1998 in the mortuary of Kilpauk Medical College Hospital. According to him, his deceased daughter prior to the occurrence, had demanded Rs.1,00,000/- from him. Only on the request made by the parents of the accused, he has not preferred any complaint to the police regarding the demand of dowry. According to him, the marriage between A1 and the deceased took place on 14.6.1998 at Raghavendra Wedding Hall and at that time, he had presented 100 sovereigns of gold ornaments and cash of Rs.1,00,000/- and has also agreed to present a plot at Tirupathy and that after the marriage both the accused and the deceased were living happily and he took back his daughter during the month of Aadi and thereafter she was staying in his house for nearly 1 ½ months and on 27.8.1998, he again took her daughter left at the house of A1. According to him, A1 had also informed him about him about the suicidal attempt made by the deceased.

4d. P.W.9 is the brother of the deceased, who would categorically say that there was no demand of dowry by A1 and his family. P.W.10 is the postmortem constable, who had handed over the corpse to the Kilpauk Medical College Hospital and identified the corpse to the doctor, who had conducted autopsy. After autopsy, he had recovered M.O.1 to M.O.6 and handed over the same to the Investigating Officer,P.W.14. P.W.11 is the Sub Inspector of Police who had registered the case on the basis of the complaint Ex P1 as Choolaimedu Police Station Crime No.1155/1998 under Section 174 of Cr.P.C.

4e. P.W.12 is the doctor, who had conducted autopsy on the corpse which was identified by P.W.10. Ex P14 is the post mortem certificate issued by her. Her final opinion is Ex P16. The doctor has opined that the deceased would have died due to diazepam poison and further opined that the death would have occurred 60 to 72 hours prior to the post mortem. The doctor has further opined that drowning was postmortem in nature.

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4f. P.W.13 is the Revenue Divisional Officer, who had conducted inquest on the corpse of Rajalakshmi, Ex P17 is his inquest report. Ex P18 series are the statements of the witnesses, who had examined. He has stated in his examination that his enquiry revealed that there was no dowry harassment by the accused on the deceased. P.W.14 is the Investigating Officer, who took up the investigation in this case, visited the place of occurrence and prepared Ex P2 and
Ex P4 observation Mahazars and had drawn rough sketches ExP19 and Ex P20. Ex P21 is the inquest report of the Inspector Ashok Kumar. Ex P22 is the recovery mahazar prepared by Ashok kumar. He has examined the witnesses and recorded their statements. He has given a letter of requisition to the Revenue Divisional Officer to conduct an enquiry.

4g. P.W.15 is the predecessor of P.W.14, who had prepared observation Mahazar. P.W.16 is another investigating Officer, who had drawn a rough sketch Ex P20. P.W.17 is the neighbour of P.W.1.According to him on 21.10.1998 a foul smell was emanating from the well situate in the backyard. P.W.18 is also a neighbour of P.W.1 According to him, on 22.10.1998 night, the police enquired him about the floating of a body in the well of the backyard of P.W.1. P.W.19 was treated as a hostile witness. P.W.20 has helped the police in retrieving the body from the well along with P.W.3. After completing the formalities, P.W.14 has filed the charge sheet on 19.11.1998 against the accused.

5. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, they would deny their complicity with the crime. After going through the materials available on record before the trial Court placed by the prosecution including the oral and documentary evidence, the learned trial Judge has come to a conclusion that the charge levelled against the accused have not been proved beyond any reasonable doubt and accordingly acquitted the accused. Aggrieved by the findings of the learned trial Judge, P.W8 has preferred this revision.

6. Now the point for determination in this revision is whether the findings of the learned trial Judge is full of manifest error or perverse in nature to warrant any interference from this Court?

7. Heard Mr.N.Raja Senthoor Pandian, learned counsel for the revision petitioner Mr.A.Padmanabhan, learned counsel appearing for R1 and R2 and Mr.V.R.Balasubramaniam learned Additional Public Prosecutor for the State/R3 and considered their respective submissions.

8. The Point:
The revision petition has been filed against the order of acquittal. The case of the prosecution is that the deceased Rajalakshmi was done to death by administering diazepam poison . Admittedly A1 and A2 are the dentists. The deceased is the wife of A1 who was a house wife. There is no occurrence witness. The evidence of P.W.12, the post mortem doctor would clearly go to show that after the commission of murder, the victim would

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have been dropped in a well from a height of about 36 feet. The doctor has opined that drowning is postmortem in nature. According to P.W.12, the doctor, who had conducted autopsy , diazepam is a pain killer (sedative) and that one pill may not cause death for human being. According to the Investigating Officer, the bottle containing the said medicine was recovered from the bureau kept in the room of the deceased. Further P.W.14 would admit that there is no evidence to show that the body was brought from the house of the accused to the well in a car. P.W.14 has also seized the vehicle a fiat car bearing Registration No.TN-09-C-2800 from A1 there is no evidence to show that the said body was removed from the house of the A1 to the well in which the body was seen by P.W.1 floating. The report of the Revenue Divisional Officer Ex P17 would go to show that the deceased was not subjected to any dowry harassment by the accused. Further there has been no motive attributed against the accused to commit the murder of the deceased.

9. It is the case of the prosecution that since A1 was not potent to satisfy the deceased Rajalakshmi, the accused in order to prevent Rajalakshmi from revealing the said fact to the world, committed the crime. Ex P26 is the potency certificate issued by the doctor Deivasigamani. The said doctor was not examined but his report Ex P26 was marked through the Investigating Officer. The report will go to show that there is nothing to suggest that A1 is an impotent. Ex P26 cuts at the root of the prosecution case that only to prevent the deceased Rajalakshmi from informing the world that A1 was impotent , the accused had murdered her. The case of the prosecution is that on 19.10.1998 at about 5.30p.m A1 had mixed diazepam tablet in tea and gave the same to the deceased. The said tea cup was not also recovered from the place of occurrence.

10. The prosecution relies on the confession statement of the first accused on the basis of which about 16 diazepam tablets were said to be recovered from the dressing table drawer of the first accused's bed room under Ex P24. The learned trial Judge has rejected the alleged confession statement of A1 on the ground that the witness under the confession statement P.W.7 has not supported the case of the prosecution. The other witness in the confession statement viz., Mohanraj was also not examined by the prosecution.

11. Further P.W14 would admit in the cross examination that he has not mentioned in the charge sheet, the place of administering the diazepam tablet to the deceased by the accused. Further there is no evidence on record to show that at the time of the consumption of poison by the deceased, A1 was present in the house. P.W.14 further admitted in the cross examination that A2 is not responsible for the death of the deceased. There is no evidence to show that the body was removed from the house of A1 to the well of P.W.1 in the backyard with the assistance of the accused.

12. Since the prosecution has failed to link to the accused with the

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crime, the learned trial Judge has rightly acquitted the accused from the charge levelled against them. Under such circumstances, I do not find any manifest error or perverseness in the Judgment of the trial Court to warrant any interference from this Court. The point is answered accordingly.

13. In fine, the revision is dismissed, confirming the judgment in S.C.No.520 of 2000 on the file of the learned IV Additional Sessions Judge, City Civil Court, Chennai.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. XVII Metropolitan Magistrate, G.T. Chennai

2.-do- through the Chief Metropolitan Magistrate, Egmore, Chennai

3. IV Additional Sessions Judge, City Civil Court, Chennai

4.-do-through Principal Sessions Judge, City Civil Court, Chennai

5. The Superintendent of Central Prison, Chennai

6. The Public Prosecutor, High Court, Madras

7. The Inspector of Police,Anna Nagar Circle,
R-5, Choolaimedu Police Station,
Chennai.

+ 1 cc to MR.A.Padmanaban Advocate SR.NO.48374
+ 1 cc to Mr. N.Rajasenthoor Pandian Advocate SR.NO.48105

VRK(CO)
rd 10.8.07

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